

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SHUWA INVESTMENTS CORP.,

Plaintiff and Respondent,

v.

RYO SATO,

Defendant and Appellant.

B215954

(Los Angeles County
Super. Ct. No. GC027797)

APPEAL from an order of the Superior Court of Los Angeles County, Jan A.
Pluim, Judge. Affirmed.

Zee Law Group and Tappan Zee for Defendant and Appellant.

Law Offices of James S. Uyeda and James S. Uyeda for Plaintiff and Respondent.

INTRODUCTION

Defendant Ryo Sato appeals from an order denying his motion to quash plaintiff Shuwa Investments Corporation's writ of execution or, in the alternative, to stay the execution sale of his residence until after the bankruptcy court hears a pending motion to avoid lien. Defendant contends that plaintiff has no standing to pursue the judgment against him because it is a dissolved corporation, and the writ of execution is invalid in that it is based upon a judgment which is void because it omits defendant's social security number. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

The litigation between the parties has a long and storied history. Plaintiff obtained a money judgment in the sum of \$100,000 against defendant in 1998. Plaintiff recorded an abstract of judgment in 2000. After plaintiff discovered that defendant and his wife had transferred half of their ownership interest in real property in South Pasadena to their son and daughter, plaintiff filed an action seeking a decree that the son's and daughter's interests were subordinate to plaintiff's 1998 judgment.

Plaintiff obtained a judgment against defendant, his son and his daughter, and it was entered on September 9, 2002. The judgment acknowledged the amounts due under the previous judgment lien and ordered the sale of the real property. In 2004, plaintiff recorded a second abstract of judgment on the second judgment. The terms of the judgment attached to the abstract of judgment provided that the amounts referred to in the judgment derived from and related back to the original judgment and that the previous abstract of judgment created the judgment lien thereon. Pursuant to the second judgment, the South Pasadena property was to be sold. On the morning of the sale, defendant filed

¹ Some of the facts are taken from our previous opinion in this matter, *Shuwa Investments Corp. v. Ryo Sato* (Aug. 27, 2008, B203702) [nonpub. opn.].

a bankruptcy petition under Chapter 7 of the Bankruptcy Code. He was subsequently granted a discharge of his debts.

During the pendency of the bankruptcy proceedings, defendant filed in the bankruptcy court a motion to avoid lien. He argued that the abstract of judgment should be voided because it omitted his social security number. Plaintiff opposed the motion. Before the motion was heard, the bankruptcy trustee completed his administration of the bankruptcy estate and certified that the bankruptcy had been fully administered. The bankruptcy court eventually denied defendant's motion to avoid the lien during the pendency of the motion to quash, which is the subject of this appeal.

In September 2008, after this division issued its previous unpublished decision (see fn. 1), plaintiff again applied for a writ of sale to enforce the judgment. The writ was issued on September 25, 2008, and the sheriff levied upon defendant's property. On February 25, 2009, the sheriff noticed the sale of the property for April 8, 2009.

Defendant filed his motion to quash and to stay execution of the sale. Before the motion was heard, the bankruptcy court denied defendant's motion to avoid the lien on April 7, 2009. On April 10, 2009, the trial court in the instant case then denied defendant's motion to quash the writ of execution or, in the alternative, to stay sale until after the bankruptcy court heard the motion to avoid lien.

While this appeal was pending, on October 12, 2009, defendant filed another motion in bankruptcy court to avoid plaintiff's judgment lien. Defendant again raised the argument as to the lack of social security number on the abstract of judgment. The bankruptcy court denied defendant's motion in its entirety "with prejudice."

DISCUSSION

A. Plaintiff's Standing to Pursue the Claim Against Defendant

Plaintiff filed a certificate of dissolution with the Secretary of State on November 30, 2004. Defendant asserts that pursuant to Corporations Code section 1905,

subdivision (b),² plaintiff's corporate powers, rights, and privileges no longer existed and it was not able to maintain the action against defendant. Defendant's reliance on section 1905, subdivision (b), is misplaced. This section simply states the general rule that the filing of a certificate of dissolution causes the corporation's powers, rights and privileges to cease. A dissolved corporation continues to exist for an indefinite period as a legal entity for the purpose of winding up its affairs. (*Peñasquitos, Inc. v. Superior Court* (1991) 53 Cal.3d 1180, 1185.)

Section 2010 provides: “(a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof. [¶] (b) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof. [¶] (c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly.”

The statute is clear that the mere fact that a corporation is dissolved does not preclude it from continuing for the purpose of attempting to collect debts or judgments owed. Allowing a corporation to continue to pursue a collection action may be necessary, as in the instant case, even after the entity has been formally dissolved. In *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 55, the court, citing section 2010, held that a dissolved corporation was not deprived of standing to prosecute a claim against a third party even though a certificate of dissolution had been filed. In

² Corporations Code section 1905, subdivision (b), provides: “The certificate of dissolution shall be filed with the Secretary of State and thereupon the corporate powers, rights, and privileges of the corporation shall cease. . . .”

All further statutory references are to the Corporations Code, unless otherwise stated.

Timberline, Inc. v. Jaisinghani (1997) 54 Cal.App.4th 1361, the court stated: “a dissolved corporation maintains considerable corporate powers to conduct whatever business is required to wind up its affairs—including prosecuting actions and enforcing judgments.” (*Id.* at pp. 1368-1369.)

Defendant’s argument that it would be inequitable to allow plaintiff to pursue collection on its judgment even though it would be immune from actions against it is not persuasive and is contrary to the law. Claims may be asserted against a dissolved corporation, even if they arise after dissolution, and the corporation remains liable to the extent of its undistributed assets and available insurance. (§ 2011, subd. (a)(1); *Peñasquitos, Inc. v. Superior Court*, *supra*, 53 Cal.3d at pp. 1193-1194.)

B. *Validity of the Abstract of Judgment*

Defendant contends that the abstract of judgment is void under Code of Civil Procedure section 674 because it omits his social security number. Subdivision (a) of that statutory provision provides in part that “an abstract of a judgment or decree requiring the payment of money . . . shall contain . . . [¶] . . . [¶] (6) [T]he last four digits of the social security number and driver’s license number of the judgment debtor if they are known to the judgment creditor.” Defendant’s argument is not compelling.

1. *Collateral Estoppel*

Preliminarily, plaintiff contends that defendant is collaterally estopped by two bankruptcy court rulings denying two consecutive motions in which plaintiff made the same argument. Collateral estoppel bars relitigation of all factual issues actually litigated and necessarily decided in prior litigation. (*Alhino v. Starr* (1980) 112 Cal.App.3d 158, 170; *Americana Fabrics, Inc. v. L. & L. Textiles, Inc.* (9th Cir. 1985) 754 F.2d 1524, 1529.) It may be applied if the issues decided in the prior adjudication are identical to those raised in the present action, there was a final judgment on the merits in the prior adjudication, and the party against whom the doctrine is sought to be applied was a party to the prior adjudication. (*Clemente v. State of California* (1985) 40 Cal.3d 202, 222.)

Defendant filed two motions in the bankruptcy court raising the same issue concerning the absence of a social security number. Both were denied, the second one with prejudice. The record does not reflect that an appeal was taken from the denial of either motion. Defendant is collaterally estopped to relitigate the matter. (*Clemente v. State of California, supra*, 40 Cal.3d at p. 222.)

2. Code of Civil Procedure Section 674 is Inapplicable

Keele v. Reich (1985) 169 Cal.App.3d 1129, relied on by defendant, is distinguishable. In *Keele*, the court stated, “[n]o court has validated a judgment lien where mandated information was *omitted* from an abstract.” (*Id.* at p. 1133) However, in *Keele*, it was the subsequent purchaser, not the judgment debtor, who was attempting to invalidate the abstract of judgment due to the absence of the judgment debtor’s social security number. In 1988, the Legislature amended Code of Civil Procedure section 674 to add, among other things, the current language in subdivision (b), which provides that a “purchaser, encumbrancer, or lessee without actual notice [of the abstract] may assert as a defense against enforcement of the abstract of judgment the failure to comply with this section” Defendant in the instant case is not a purchaser, encumbrancer, or lessee without actual notice of the abstract. Section 674 therefore does not bar enforcement of the abstract of judgment against him.

3. Operative Abstract of Judgment is the Earlier Recorded Abstract

Even assuming that collateral estoppel and Code of Civil Procedure section 674 do not act as bars to defendant’s claim, the operative abstract of judgment contained defendant’s social security number. Plaintiff created a valid judgment lien in the previous action filed in 1998, with the abstract being recorded in 2000. That abstract contained defendant’s social security number. The abstract of judgment in the instant action refers and relates back to the operative judgment lien which contains the social security number. The judgment, which was attached to the abstract, provides in pertinent part:

“IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

“1. Now due and owing to Plaintiff, SHUWA, from Defendant, Ryo Sato, are the following sums: (i.) the total principal amount of damages awarded by the Los Angeles Superior Court to Plaintiff, SHUWA, pursuant to a Judgment (“Judgment”) entered on March 13, 1998, in a prior action (Case No. BC159185) in the amount of \$100,000.00 . . .

“2. The amounts described in Paragraph 1 herein are valid and enforceable liens on the real property described in the Complaint filed by Plaintiff, SHUWA, in the instant action as 4945 Harriman Avenue, South Pasadena, California 91030 (the “Harriman Property”) pursuant to an Abstract of Judgment for the Judgment duly recorded in the County of Los Angeles by Plaintiff, SHUWA on May 1, 2000, as Recorded Document No. 00-0656699 (the “Abstract of Judgment”).”

Third parties viewing the abstract of judgment in the instant action would have constructive notice of defendant’s social security number contained in the earlier recorded abstract of judgment, since it was specifically referenced (12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 331, p. 388). A case relied on by defendant, *In re Conceicao* (Bankr. 9th Cir. 2005) 331 B.R. 885, appears to be concerned with “avoiding ‘unnecessarily clouding innocent people’s title’ who happen to have names similar to judgment debtors.” (*Id.* at p. 891.) This is not a problem here, since third parties aware of the abstract of judgment in the instant action would have constructive notice of the earlier recorded abstract of judgment that contained defendant’s social security number.³

In summary, the judgment against defendant is not void due to the omission of defendant’s social security number from the second recorded abstract of judgment. It follows that the writ of execution is not invalid as based upon a void judgment.

³ Decisions of the lower federal court on federal questions, while persuasive and entitled to great weight, are not binding on state courts. (*Flynt v. California Gambling Control Com.* (2002) 104 Cal.App.4th 1125, 1132; *Smith v. County of Los Angeles* (1994) 24 Cal.App.4th 990, 997, fn. 2.)

DISPOSITION

The order is affirmed. Plaintiff is to recover its costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.